

**BOARD OF COUNTY COMMISSIONERS**

**AGENDA ITEM SUMMARY**

Meeting Date: MAY 19, 2004 Division: TDC

Bulk Item: Yes X No      Department:                                     

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**AGENDA ITEM WORDING:**

Approval of Agreement with Key West Business Guild to provide Visitor Information Services which promote gay and lesbian tourism commencing October 1, 2004 through September 30, 2007.

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**ITEM BACKGROUND:**

TDC approved same at their meeting of April 14, 2004.

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**PREVIOUS REVELANT BOCC ACTION:**

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**CONTRACT/AGREEMENT CHANGES:**

Modification of length of contract

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**STAFF RECOMMENDATIONS:**

Approval

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**TOTAL COST:** \$36,500


**BUDGETED:** Yes X No     

**COST TO COUNTY:** \$36,500 **SOURCE OF FUNDS:** TDC

**REVENUE PRODUCING:** Yes X No      **AMOUNT PER MONTH**      **Year**     

**APPROVED BY:** County Atty X OMB/Purchasing X Risk Management X

**DIVISION DIRECTOR APPROVAL:**

  
(Lynda Stuart)

**DOCUMENTATION:** Included X To Follow      Not Required     

**DISPOSITION:**                                     

**AGENDA ITEM #** E 11

MONROE COUNTY BOARD OF COUNTY COMMISSIONERS

**CONTRACT SUMMARY**

Contract with: Key West Business Guild Contract #                       
 Effective Date: 5/19/04  
 Expiration Date:                       
 Contract Purpose/Description:                     

Approval of Agreement with Key West Business Guild to provide Visitor Information Services which promote gay and lesbian tourism commencing October 1, 2004 through September 30, 2007.

Contract Manager: Maxine Pacini 3523 TDC # 3  
 (Name) (Ext.) (Department/Stop #)  
 for BOCC meeting on 5/19/04 Agenda Deadline: 5/4/04

**CONTRACT COSTS**

Total Dollar Value of Contract: \$ 36,500 Current Year Portion: \$ 21,291.70  
 Budgeted? Yes ☒ No ☐ Account Codes: 117-77010-530340-T47V-399X-530340  
 Grant: \$                       
 County Match: \$                     

**ADDITIONAL COSTS**

Estimated Ongoing Costs: \$           /yr For:                       
 (Not included in dollar value above) (eg. maintenance, utilities, janitorial, salaries, etc.)

**CONTRACT REVIEW**

	Date In	Changes Needed	Reviewer	Date Out
Division Director	<u>4/18/04</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>M. Stuart</u>	<u>4/18/04</u>
Risk Management	<u>4/13/04</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>Bill Graham</u>	<u>4/13/04</u>
O.M.B./Purchasing	<u>          </u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>Salvatore Zappala</u>	<u>4/22/04</u>
County Attorney	<u>3/25/04</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>S.Hutton</u>	<u>3/25/04</u>

Comments:

## **AGREEMENT FOR GAY & LESBIAN VISITOR INFORMATION SERVICES**

THIS AGREEMENT is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2004, by and between the BOARD OF COUNTY COMMISSIONERS, Monroe County, Florida, hereinafter referred to as the County and the Key West Business Guild, hereinafter referred to as Provider;

### **WITNESSETH**

WHEREAS, Provider is qualified to provide Visitor Information Services which promote gay and lesbian tourism; and

WHEREAS, County and Provider currently have a contractual arrangement for services through September 30, 2004; and

WHEREAS, both parties desire to modify said agreement and to extend it an additional three years with an additional two (2) year renewal option; and

WHEREAS, the Tourist Development Council (TDC) has recommended to County that a new contract for Visitor Information Services which promote gay and lesbian tourism be entered into; and

WHEREAS, the County wishes to enter into this Agreement for Visitor Information Services which promote gay and lesbian tourism with the Provider;

NOW AND THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

1. **OLD AGREEMENT SUPERSEDED:** The Agreement dated April 19, 2001; amended June 19, 2002 and July 15, 2003 is superseded and replaced by this Agreement effective on the beginning date of paragraph 2.

2. **TERMS:** The term of this Agreement is for a period of three years beginning October 1, 2004 and expiring on September 30, 2007. The County has an option to extend this agreement for two (2) additional years.

3. **SCOPE OF SERVICES:** The Provider shall pursuant to this agreement, provide Visitor Information Services which promote gay and lesbian tourism as described herein:

- a. The Provider shall respond to all telephone inquiries from the Key West Business Guild toll-free number and (305) line with general information about the destination and Monroe County.

- b. The Provider shall respond to all telephone inquiries for the benefit of the destination as a whole and not just for the benefit of the Provider, members of the Provider and/or discriminate between Key West Business Guild and non-guild members.
- c. The Provider shall retrieve and record all information required for mail fulfillment which includes the name, address, ZIP code and telephone number or e-mail address (when provided) of the caller.
- d. Provider shall provide live operator, voice mail, answering machine or similar procedures to capture the required information during off hour operation.
- e. The Provider shall input the inquiries for mail fulfillment into data base, prepare labels, place labels on envelopes, place approved collateral material in envelopes, place first class postage and deliver fulfillment to the post office. The Provider shall use TDC approved promotional collateral and local gay/lesbian industry materials as mail fulfillment.
- f. The Provider shall provide their own telephone lines, mail fulfillment envelopes/packaging, postage, postage equipment, computer equipment and staff to provide said service.
- g. The Provider shall provide Visitor Information Services to visitors or enquirers calling into the facility Monday through Sunday, 9:00 a.m. to 5:00 p.m., with the exception of Christmas Day; New Years Day; Memorial Day; July 4<sup>th</sup> Day; Labor Day and Thanksgiving Day
- h. The Provider shall provide the TDC with monthly reports on telephone inquiries that include media ad responses, top calling states, visitor interests and other market research information.
- i. The Provider will refer the caller/visitor to the Fla-Keys.com website.

4. **COMPENSATION:** Provider shall charge Thirty Six Thousand and Five Hundred (\$36,500) dollars as an annual administration fee to cover costs outlined in paragraph 2. Payment will be made in eleven (11) monthly installments of Three Thousand, Forty One dollars and sixty six cents (\$3,041.66) and one (1) monthly installment of Three Thousand, Forty One dollars and seventy four cents (\$3,041.74). The Board of County Commissioners and the Tourist Development Council assume no liability to fund this agreement for an amount in excess of this award. Payment for expenditures permissible by law and County policies shall be made through reimbursement to Provider upon presentation of invoices, and other documentation necessary to support a claim for reimbursement. Monroe County's performance and

obligation to pay under this agreement is contingent upon an annual appropriation by the BOCC.

5. **RECORDS – ACCESS AND AUDITS:** The Provider shall maintain adequate and complete records to justify all charges, expenses and costs incurred in performing the work for at least three (3) years after completion of this agreement. The County shall have access to such books, records, and documents concerning the contracted services. The access to and inspection of such books, records, and documents by the County shall occur at any reasonable time. Provider understands that it shall be responsible for repayment of any and all audit exceptions identified by County. Any current or subsequent contract awards will be offset by the amount of any audit exceptions. In the event there are not funds still held by County for a contract award, the amount of audit exception shall be billed to Provider who shall promptly pay same.

6. **INDEPENDENT CONTRACTOR RELATIONSHIP:** The Provider, is and shall be, in the performance of all works, services, and activities under this agreement, an independent contractor and not an employee, agent or servant of the County. The Provider shall exercise control, direction, and supervision over the means and manner and personnel in which it and its employees perform the work. In all respects, the "Provider's" relationship and the relationship of its employees to the County shall be that of an independent contractor and not as employees or agents of the county. Moreover, the Provider shall have no authority whatsoever to act on behalf and/or as agent for the County in any promise, agreement, or representation other than specifically provided for in this agreement. The County shall at no time be legally responsible for any negligence on the part of said contractor, its employees or agents, resulting in either bodily or personal injury or property damage to any individual, form, or corporation.

7. **MODIFICATION:** Additions to, modification to, or deletions from the Scope of Work and/or costs of work set forth in this contract may be made only by amendment to this agreement which must be approved in writing by the County. No modification shall become effective without written approval of County.

8. **BREACH AND PENALTIES:** The parties agree to full performance of the covenants contained in this contract, and the County reserves the right at its discretion, provided any breach is material, to terminate the services in this contract for any misfeasance, malfeasance or nonperformance of the contract terms or negligent performance of the contract terms by Provider. Any waiver of any breach of covenants herein contained shall not be deemed to be a continuing waiver and shall not operate to bar the County from declaring a forfeiture for any succeeding breach either of the same conditions or covenants or otherwise.

9. **INSURANCE:** The Provider shall maintain the following required insurance throughout the entire term of this contract and any extensions. Failure to comply with this provision may result in the immediate suspension of all work until the

required insurance has been reinstated or replaced. Delays in the completion of work resulting from the failure of the Provider to maintain the required insurance shall not extend any deadlines specified in this contract and any penalties and failure to perform assessments shall be imposed as if the work had not been suspended, except for Provider's failure to maintain the required insurance.

The Provider shall provide, to the County, as satisfactory evidence of the required insurance, either:

- \* Certificate of Insurance
- or
- \* A Certified copy of the actual insurance policy

The COUNTY, at its sole option, has the right to request a certified copy of any or all insurance policies required by this contract.

All Insurance policies must specify that they are not subject to cancellation, non-renewal, material change, or reduction in coverage unless a minimum of thirty (30) days prior notification is given to the County by the insurer.

The acceptance and/or approval of the Provider's insurance shall not be construed as relieving the Provider from any liability or obligation assumed under this contract or imposed by law.

The Monroe County Board of County Commissioners, its employees and officials will be included as "Additional Insured" on all policies, except for Workers' Compensation.

Any deviations from these General Insurance Requirements must be requested in writing from the COUNTY. Such requests shall be prepared from the COUNTY's form entitled "Request for Waiver of Insurance Requirements" and approved by Monroe County Risk Management.

A. Prior to the commencement of work governed by this contract the PROVIDER shall obtain Workers' Compensation Insurance with limits sufficient to respond to Florida Statute 440.

In addition, the Provider shall obtain Employers' Liability Insurance with limits of not less than:

- \$100,000 Bodily Injury by Accident
- \$500,000 Bodily Injury by Disease
- \$100,000 Bodily Injury by Disease, each employee

Coverage shall be maintained throughout the entire term of the contract.

Coverage shall be provided by a company or companies authorized to transact business in the state of Florida and the company or companies must maintain a minimum rating of A-V1, as assigned by the A.M. Best Company.

B. Prior to the commencement of work governed by this contract, the PROVIDER shall obtain General Liability Insurance. Coverage shall be maintained throughout the life of the contract and include, as a minimum:

- Premises Operations and Contents
- Products and Completed Operations
- Blanket Contractual Liability
- Personal Injury Liability

- **Expanded Definition of Property Damage**

The minimum limits acceptable shall be:

\$1,000,000 Combined Single Limit (CSL)

If split limits are provided, the minimum limits acceptable shall be:

\$ 500,000 per person

\$1,000,000 per Occurrence

\$ 100,000 Property Damage

An Occurrence Form policy is preferred. If coverage is provided on a Claims Made policy, its provisions should include coverage for claims filed on or after the effective date of this contract. In addition, the period for which claims may be reported should extend for a minimum of twelve (12) months following the acceptance of work by the County.

The Monroe County Board of County Commissioners shall be named as Additional Insured on all policies issued to satisfy the above requirements.

10. **INDEMNIFICATION AND HOLD HARMLESS:** The Provider shall indemnify and hold harmless the County, their departments, agencies, officials, employees, agents, servants and contractors, against any claims, liabilities and expenses (including reasonable attorney's fees) arising as a result of any direct and/or indirect action of Provider, its employees, agents, servants and/or contractors in the performance of the terms of this agreement or otherwise related to activity conducted in the furtherance of this agreement except to the extent that, in the case of any act of negligence, Provider reasonably relied upon material supplied by the County or any employee of County. Provider shall immediately give notice to County of any suit, claim or action made against Provider that is related to any activity under this agreement and will cooperate with the County in the investigation arising as a result of any suit, claim or action related to this agreement.

11. **PERMITS:** The Provider shall secure all required permits, and/or licenses necessary for this project.

12. **LAWS AND REGULATIONS:** It shall be understood and agreed that any and all services, materials and equipment shall comply fully with all Local, State and Federal laws and regulations.

13. **TAXES:** The County is exempt from Federal, Excise and State of Florida Sales Tax.

14. **FINANCE CHARGES:** The County will not be responsible for any finance charges.

15. **SEVERABILITY:** If any provision of this contract shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this contract, or the application of such provision other than those as to which it is invalid or unenforceable, shall not be affected thereby; and each provision of this contract shall be valid and enforceable to the fullest extent permitted by law.

16. **FORCE MAJEURE:** The Provider shall not be liable for delay in performance or failure to perform in whole or in part, the services due to the occurrence of any contingency beyond its control or the control of any of its sub-providers or suppliers, including labor dispute, strike, labor shortage, war or act of war whether an actual declaration thereof if made or not, insurrection, sabotage, riot or civil commotion, act of public enemy, epidemic, quarantine restriction, accident, fire, explosion, storm, flood, drought, or other act of God, act of any governmental authority, jurisdictional action, or insufficient supply of fuel, electricity, or materials or supplies, or technical failure where the Provider has exercised reasonable care in the prevention thereof, and any such delay or failure shall not constitute a breach of the agreement. The Provider shall notify the TDC of any delay or failure to perform within five (5) days of such action. Upon demand of TDC, the Provider, must furnish evidence of the causes of such delay or failure. The Provider shall not resume its performance hereunder unless provided for in the Scope of Services.

17. **ASSIGNMENT:** Provider shall not assign, transfer, sublease, pledge, hypothecate, surrender, or otherwise encumber or dispose of this contract or any estate created by this contract or any interest in any portion of the same, or permit any other person or persons, company or corporation to perform services under this contract without first obtaining the written consent of the County. In the event of such consent, this agreement shall be binding upon the Provider's successors and assigns.

18. **DISCLOSURE:** The Provider shall be required to list any or all potential conflicts of interest, as defined by Florida Statute 112 and Monroe County Ethics Ordinances. The Provider shall disclose to the County all actual or proposed conflicts of interest, financial or otherwise, direct or indirect, involving any client's interest which may conflict with the interest of the County.

19. **ADVERTISING:** Prior to any advertising, publicity, or promotional materials initiated by the Provider relating to the services under this agreement, the Provider shall obtain prior written approval regarding said promotional material for the TDC before such material can be released. Materials shall be presented to the TDC for approval and shall be returned to the Provider in a timely manner. All promotional material related to services under this agreement shall only include references to Monroe County tourism and each mailing package must include the official Monroe County TDC Gay and Lesbian brochure.

20. **ADDITIONAL CONDITIONS:** Provider agrees to accept additional conditions governing the use of funds or performance of work as may be required by federal, state or local statute, ordinance or regulation or by other policy adopted by County. Such additional conditions shall not become effective until Provider has been notified in writing and no such additional conditions shall be imposed retroactively.



21. **INDEPENDENT PROFESSIONAL JUDGEMENT:** Provider shall at all times exercise independent professional judgment and shall assume full responsibility for the service to be provided and work to be completed.

22. **CARE OF PROPERTY:** The Provider shall be responsible to the County for the safekeeping and proper use of the property entrusted to Provider's care, to include any and all insurance for the value of the equipment and any maintenance or service contracts relating to such equipment for its service life.

23. **ETHICS CLAUSE:** The Firm warrants that no person has been employed or retained to solicit or secure this contract upon an Agreement or understanding for a commission, percentage, brokerage, or contingent fee and that no member of the Monroe County government or the TDC has any interest, financially or otherwise, in the Firm or its subcontractors.

24. **NOTICE:** Any notice required or permitted under this agreement shall be in writing and hand-delivered or mailed, postage prepaid by certified mail, return receipt requested, to the other party as follows:

For Key West Business Guild: Mr. Jon Allen  
Key West Business Guild  
P.O. Box 1208  
Key West, FL 33041

For Monroe County TDC: Ms. Lynda Stuart  
1201 White Street  
Suite 102  
Key West, FL 33040

County shall give notice to Provider of any meetings on which is an agenda item pertaining to telemarketing. Said notice shall be given so that provider has ample time to make travel arrangements for an Executive Board member to attend the meeting.

25. **TERMINATION:** Either party shall have the right to cancel this Agreement at its sole discretion with or without cause upon ninety (90) days prior written notice to the other party. Provider shall deliver to the County all papers, equipment and other material related to the work performed under this contract upon termination thereof.

26. **PUBLIC ENTITY CRIME STATEMENT:** A person or affiliate who has been placed on the convicted vendor list following a conviction for public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with

any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

27. FULL AGREEMENT: This writing embodies the entire Agreement and understanding between the parties hereto, and there are not other agreements and understandings, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby. In order to be effective any amendment and/or change to this Agreement shall be in writing recommended by the TDC and approved by the COUNTY and signed by both parties.

28. This contract has been carefully reviewed by legal counsel for both parties. Therefore, this contract shall not be strictly construed against either party on the basis of authorship.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

(SEAL)  
Attest:  
DANNY L. KOLHAGE, Clerk

Monroe County Board of County  
Commissioners

\_\_\_\_\_  
Clerk


\_\_\_\_\_  
Mayor/Chairman

(SEAL)  
Attest:

Key West Business Guild

By : \_\_\_\_\_  
President

MONROE COUNTY ATTORNEY  
APPROVED AS TO FORM:

  
SUZANNE A. HUTTON  
ASSISTANT COUNTY ATTORNEY  
Date 3/25/04